

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioners are husband and wife. Both are recipients of Home and Community Based Medicaid (HCBM) benefits, a program that allows them to receive nursing and other services in their home instead of in a long-term care facility (see infra). Eligibility for this program depends in part on a recipient's income. Certain individuals, like the petitioners, who after receiving all allowable deductions are determined to still have net income available are responsible

for a "patient share" in this amount that they must pay out of pocket each month before Medicaid covers the remainder of their home care expenses (see infra).

2. During a review of their eligibility for this program in February 2003 the Department discovered it had made an error in the manner in which it was calculating the petitioners' eligibility. The error stemmed from the fact that the wife had been placed on the HCBM program before the husband. During the time that only the wife was receiving HCBM benefits she qualified for a spousal deduction from her income. When the husband was added to the program, neither of them qualified for a spousal deduction, but the Department erroneously calculated their eligibility for the program allowing both of them this deduction.

3. In notices to the petitioners dated March 17, 2003, the Department informed them that due to the correction of this error the wife's patient share amount would increase from \$0 to \$364.23 a month and that the husband's patient share would increase from \$92 to \$191.96. Needless to say, the petitioners will have difficulty paying these additional amounts each month for their medical care.

4. The Department determined the petitioners' gross incomes (from Social Security, pensions, and rental income) to

be \$1,175.66 for the husband and \$1,247.93 for the wife. At the hearing in this matter held on May 5, 2003, the petitioners did not dispute that the Department had correctly determined their incomes and given them all the allowable deductions (see infra).

ORDER

The Department's decisions is affirmed.

REASONS

Under the regulations, individuals who qualify for the Medicaid Home and Community Based Waiver Program have their income eligibility determined in a manner similar to those individuals in long-term care. See Procedures Manual § P-2430H. Allowable deductions from gross income include a recipient's Medicare and any other health insurance premiums (§ M431), non-Medicaid-covered medical expenses (§ M432), a home upkeep deduction (§ M413.1), and a community spousal allocation (§M413.21). When both spouses are institutionalized or, as here, when both are recipients of HCBW services, there is not a "community spouse" for purposes of allowing a spousal allocation (§ M413.21, Procedures § 2430H). It is the loss of these spousal allocations, which

were previously allowed in error (see supra), that led to the recent increases in the petitioners' patient shares.

There is no dispute that the Department has allowed the petitioners the maximum remaining deductions from their incomes. Both receive deductions for the cost of their Medicare and other health insurance premiums¹ and both receive the maximum standard deduction (\$825) for Home upkeep. (See § M413.1.) Inasmuch as the Department's decisions are in accord with the pertinent regulations they must be affirmed.

3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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¹ The Department has also agreed that it will recalculate either of the petitioner's patient share amounts if they can identify any additional out-of-pocket medical expenses.